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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91211208
Party	Plaintiff United Industries Corporation
Correspondence Address	WILLIAM M BRYNER KILPATRICK TOWNSEND STOCKTON LLP 1001 WEST FOURTH STREET WINSTON SALEM, NC 27101 UNITED STATES svayner@ktslaw.com, bbryner@ktslaw.com, kteilhaber@ktslaw.com, tmad-min@ktslaw.com, bbryner@kilpatricktownsend.com
Submission	Motion to Compel Discovery
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Signature	/Sabina A. Vayner/
Date	01/22/2016
Attachments	2016.01.22 Motion to Compel_Declaration of Bryner.pdf(413703 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
	)	Opposition No. 91211208
Opposer,	)	
	)	TM: CITREPEL
v.	)	
	)	Serial No. 85805232
CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

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**OPPOSER UNITED INDUSTRIES CORPORATION’S MOTION AND  
MEMORANDUM IN SUPPORT TO COMPEL WRITTEN RESPONSES AND  
PRODUCTION OF DOCUMENTS AND TO EXTEND DISCOVERY PERIOD**

Pursuant to Rules 26, 33, 34, and 37 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120(e), Opposer United Industries Corporation (“Opposer” or “UIC”) respectfully moves the Board for an order:

(1) Compelling Applicant Chemian Technology Limited (“Applicant” or “Chemian”) to serve, within fifteen (15) days after the Board’s disposition of this motion, complete, written responses to UIC’s First Set of Interrogatories and First Request for Production of Documents, without objection;

(2) Compelling Chemian to produce, within fifteen (15) days after the Board’s disposition of this motion, all documents responsive to UIC’s First Request for Production of Documents, without objection and stating unequivocally that no documents exist for any categories of documents to which that statement is applicable; and

(3) Extending UIC’s discovery period (but not Chemian’s discovery period) by sixty (60) days from the date of the Board’s order disposing of this motion.

In accordance with 37 C.F.R. § 2.120(e)(2), UIC understands that the Board will suspend this proceeding pending disposition of the motion to compel, and that no further suspension request will be necessary.

## **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

UIC commenced this proceeding on June 20, 2013 by filing a Notice of Opposition against Chemian's application to register the mark CITREPEL (App. Serial No. 85805232) (the "CITREPEL Mark"). *See* Dkt. No. 1. Chemian filed its Answer on July 30, 2013 (Dkt. No. 4), and the parties held their discovery conference on January 23, 2014. *See* Declaration of William M. Bryner<sup>1</sup> ("Bryner Decl.") ¶ 2. UIC then served its Initial Disclosures on February 21, 2014. *See id.* ¶ 3.

After several consented extensions of proceeding deadlines to allow the parties to discuss the possibility of settlement (*see* Dkt. Nos. 8-21), UIC served its First Set of Interrogatories and First Request for Production of Documents on December 1, 2015. *See id.* ¶ 4, **Exhibits A-B**. Chemian's deadline to respond to UIC's discovery requests expired on January 5, 2016, with no written responses served or documents produced by Chemian on or before that date. *See id.* ¶ 5.

Thereafter, counsel for the parties exchanged email correspondence and participated in a telephone call on January 7, 2016, during which counsel for UIC confirmed with counsel for Chemian that Chemian did not serve any responses to UIC's discovery requests by its deadline to do so and during which UIC's counsel informed Chemian's counsel that UIC intended to file a motion to compel should Chemian fail to cure its discovery deficiencies without delay. *See id.* ¶ 6, **Exhibits C-D**.

Counsel for the parties again exchanged email correspondence on January 11, 2016, and participated in a meet-and-confer phone call later the same afternoon. *See id.* ¶ 7, **Exhibit E**.

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<sup>1</sup> The Declaration of William M. Bryner in support of this motion to compel is attached to the motion.

During the meet-and-confer call, counsel for Chemian again confirmed that Chemian's responses to UIC's discovery requests and production of responsive documents would not be forthcoming, and counsel for UIC informed Chemian's counsel that UIC would be filing a motion to compel under the circumstances. *See id.*

Consequently, because Chemian has neither served *any* written responses to UIC's discovery requests nor produced *any* responsive documents – and in fact has not even attempted in good faith to cure these discovery deficiencies – UIC had no choice but to proceed with the present motion to compel. UIC has made a good faith effort, both by telephone conference and by correspondence with counsel for Chemian, to resolve the discovery issues presented in this motion, but the parties were unable to resolve this discovery dispute without involvement of the Board. Furthermore, discovery in this proceeding is set to close on February 13, 2016. *See* Dkt. No. 20. UIC's motion to compel therefore is timely and otherwise meets all requirements of 37 C.F.R. § 2.120(e).

## **II. ARGUMENT AND CITATION OF AUTHORITY**

### **A. Chemian's Potential Objections to UIC's First Set of Interrogatories and First Request for Production of Documents Have Been Waived**

As an initial matter, because Chemian failed to comply with its discovery obligations and has not provided any reason for its failure to serve timely written responses to UIC's First Set of Interrogatories and First Request for Production of Documents, any objection Chemian may have to any discovery request propounded by UIC has been waived. *See Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (T.T.A.B. 1987); *MacMillan Bloedal Ltd. v. Arrow-M Corp.*, 203 U.S.P.Q. 952, 953 (T.T.A.B. 1979) (“[A] party who fails to respond to a request for discovery during the time allowed therefor is deemed by the Board to have forfeited his right to object to the request on its merits . . . .”); *Crane Co. v. Shimano Indus. Co.*, 184 U.S.P.Q. 691,

691 (T.T.A.B. 1975) (“Inasmuch as applicant failed to respond to the interrogatories on or before [the deadline], or to request an extension of its time to do so prior to the aforesaid date, applicant has waived its right to object to the interrogatories on their merits and must reply to them as put.”); T.B.M.P. § 527.01(c).

**B. Chemian Should Be Compelled to Respond Fully, and Without Objection, to UIC’s First Set of Interrogatories and First Request for Production of Documents, and To Produce Responsive Documents**

Federal Rule of Civil Procedure 37(a)(3)(B) and 37 C.F.R. § 2.120(e) provide that a discovering party may move for an order compelling responses to discovery requests and the production of responsive documents when the other party refuses to respond. Despite UIC’s multiple attempts to resolve Chemian’s discovery deficiencies without involvement of the Board, Chemian nevertheless has refused to provide any written responses or responsive documents to UIC. *See* Bryner Decl. ¶¶ 5-7, Exs. C-E.

UIC’s motion to compel written discovery responses and production of responsive documents therefore should be granted in its entirety, and the Board should issue an order compelling Chemian to provide complete, written responses to UIC’s discovery requests and to produce all responsive documents (or state unequivocally that no documents exist for any category of documents to which that statement is applicable) without further delay, and without any objections by Chemian. *See Pioneer Kabushiki Kaisha v. Hitachi High Techs. Am., Inc.*, 74 U.S.P.Q.2d 1672, 1679 (T.T.A.B. 2005) (granting motion to compel production of documents); *D.K. Jain d/b/a Luxor Pen Co. v. Ramparts, Inc.*, 49 U.S.P.Q.2d 1429 (T.T.A.B. 1998) (same); *Miss Am. Pageant v. Petite Prods. Inc.*, 17 U.S.P.Q.2d 1067, 1070 (T.T.A.B. 1990) (granting motion to compel responses to interrogatories and document production); *Am. Soc’y of Oral Surgeons v. Am. Coll. of Oral and Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 534 (T.T.A.B.

1979) (granting motion to compel responses to discovery requests); *Miller & Fink Corp. v. Servicemaster Hosp. Corp.*, 184 U.S.P.Q. 495, 496 (T.T.A.B. 1975) (granting motion to compel responses to interrogatories); *Johnson & Johnson v. Diamond Med., Inc.*, 183 U.S.P.Q. 615, 617 (T.T.A.B. 1974) (granting motion to compel production of documents); *see also No Fear, Inc. v. Rule*, 54 U.S.P.Q. 2d 1551, 1555 (T.T.A.B. 2000) (“[A]pplicant was obligated to respond to each request; and a proper response requires either stating that there are responsive documents and they will be produced or withheld on a claim of privilege or stating that he has no responsive documents.”); T.B.M.P. § 523.01.

**C. Discovery Should Be Extended for UIC By Sixty Days and Trial Dates Should Be Reset Accordingly**

Pursuant to Federal Rule of Civil Procedure 6(b), a party may seek to extend the discovery period for “good cause.” *See Champagne Louis Roederer v. J. Garcia Carrion, S.A.*, Opp. No. 91155105, 2004 WL 839411, at \*5 (T.T.A.B. April 15, 2004) (granting motion to extend where good cause was shown, there was no evidence of bad faith, no prejudice to non-moving party, and no abuse of the privilege of extensions); *see also* T.B.M.P. § 509.01. Moreover, the “Board is generally liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *Champagne Louis Roeder*, 2004 WL 839411, at \*5; *see also Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551 (Fed. Cir. 1991); *Am. Vitamin Prods., Inc. v. Dow Brands Inc.*, 22 U.S.P.Q.2d 1313 (T.T.A.B. 1992).

UIC’s present request for an extension of the discovery period is necessitated by Chemian’s complete lack of responses to UIC’s First Set of Interrogatories and First Request for Production of Documents, as well as its failure to produce any documents in response to UIC’s discovery requests. Discovery in this proceeding is set to close on February 13, 2016. The

extension of time requested by UIC would provide UIC with an opportunity to review Chemian's discovery responses and document production (provided that Chemian serves its written responses and produces responsive documents within fifteen days of the Board's order disposing of this motion, as requested herein), and enable it to take additional discovery, including deposition(s) of Chemian's representatives and employees. *See Miss Am. Pageant*, 17 U.S.P.Q.2d at 1070 (holding that the Board will reopen or extend discovery where a party has wrongfully refused to answer or delayed its responses to discovery and thus unfairly deprived the propounding party of the right to take follow-up).

Accordingly, UIC has shown good cause for its extension request. *See Toy Airplane Gliders of Am., Inc. v. Mark Manniso and Forte Sports, Inc.*, Opp. No. 153177, 2003 WL 21979842 (T.T.A.B. Aug. 8, 2003) (granting motion to extend discovery period); *Mobil Oil Corp. v. Carmen Anthony Steakhouse, LLC*, Opp. No. 119854, 2001 WL 1105101, at \*3-4 (T.T.A.B. Sept. 18, 2001) (granting applicant's motion to extend discovery period upon showing of "sufficient good cause"). Moreover, the prior extensions jointly requested by the parties and granted by the Board enabled the parties to focus their efforts on a potential amicable resolution of this dispute, so there has not been any bad faith or abuse of the privilege of extensions in this proceeding, and Chemian would not be prejudiced at all by the requested extension of the discovery period, as it is necessitated directly by Chemian's conduct.

UIC furthermore respectfully submits that it would be inappropriate to grant Chemian a corresponding extension of its discovery deadlines, as the present motion to compel is occasioned solely by Chemian's refusal to participate in the discovery process. For these reasons, UIC requests that the Board issue an order extending discovery for UIC (only) for sixty

(60) days from the date of the Board's order disposing of this motion, and that the Board reset all trial deadlines accordingly.

### III. CONCLUSION

For each of the foregoing reasons, UIC respectfully requests that the Board compel Chemian: (1) to serve complete, written responses to UIC's First Set of Interrogatories and First Request for Production of Documents; and (2) produce all documents responsive to UIC's First Request for Production of Documents and/or state unequivocally that no documents exist for any categories of documents to which that statement is applicable, each without objections and within fifteen (15) days after the Board's disposition of this motion.

UIC also respectfully requests that the Board extend UIC's discovery period (but not Chemian's discovery period) by sixty (60) days from the date of the Board's order disposing of the present motion.

This 22nd day of January, 2016.



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*Attorneys for Opposer  
United Industries Corporation*



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
	)	Opposition No. 91211208
Opposer,	)	
	)	TM: CITREPEL
v.	)	
	)	Serial No. 85805232
CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **Opposer United Industries Corporation's Motion and Memorandum in Support to Compel Written Responses and Production of Documents and To Extend Discovery Period** was served on Applicant's Attorney of Record on January 22, 2016 via first-class mail, with a courtesy copy by email, addressed to:

William Hare, Esq.  
McNeely, Hare and War LLP  
12 Roszel Road, Suite C104  
Princeton, NJ 08540-6234

*bill@miplaw.com*



Sabina A. Vayner  
*Attorney for Opposer*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
	)	Opposition No. 91211208
Opposer,	)	
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v.	)	
	)	Serial No. 85805232
CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

**DECLARATION OF WILLIAM M. BRYNER IN SUPPORT OF OPPOSER UNITED INDUSTRIES CORPORATION'S MOTION TO COMPEL WRITTEN RESPONSES AND PRODUCTION OF DOCUMENTS, AND TO EXTEND DISCOVERY PERIOD**

I, William M. Bryner, declare as follows:

1. I am an attorney at the law firm of Kilpatrick Townsend & Stockton LLP ("Kilpatrick Townsend"), and I am counsel of record for Opposer United Industries Corporation ("Opposer" or "UIC") in the above-referenced opposition proceeding. I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge or on files maintained in the ordinary course of business by Kilpatrick Townsend employees under my supervision.

2. On January 23, 2014, counsel for Applicant Chemian Technology Limited ("Applicant" or "Chemian"), William D. Hare, and I participated in the mandatory discovery conference for this opposition proceeding.

3. UIC served its Initial Disclosures on Chemian on February 21, 2014.

4. UIC served its First Set of Interrogatories and First Request for Production of Documents on Chemian on December 1, 2015. A true and correct copy of UIC's First Set of Interrogatories is attached as **Exhibit A**, and a true and correct copy of UIC's First Request for Production of Documents is attached as **Exhibit B**.

5. Neither I nor anyone else at Kilpatrick Townsend received written responses or responsive documents from Chemian on or before January 5, 2016, which was Chemian's deadline to respond to UIC's discovery requests.

6. On January 7, 2016, I exchanged email correspondence and participated in a telephone call with Mr. Hare to discuss Chemian's discovery deficiencies, during which I confirmed with Mr. Hare that Chemian did not serve any responses to UIC's discovery requests by its deadline to do so. During this telephone call, I informed Mr. Hare that UIC intended to file a motion to compel should Chemian fail to cure its discovery deficiencies without delay. True and correct copies of my January 7, 2016 emails to Chemian's counsel are attached as **Exhibits C and D**.

7. Mr. Hare and I again exchanged email correspondence on January 11, 2016, and participated in a meet-and-confer call later the same afternoon. During the meet-and-confer call, Mr. Hare again confirmed that Chemian's responses to UIC's discovery requests and production of responsive documents would not be forthcoming, and I informed Mr. Hare that UIC would be filing a motion to compel under the circumstances. A true and correct copy of my January 11, 2016 email to Chemian's counsel is attached as **Exhibit E**.

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that the facts set forth in this Declaration are true; that all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

This 22nd day of January, 2016.



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William M. Bryner

## **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
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	)	
Applicant.	)	

**OPPOSER UNITED INDUSTRIES CORPORATION'S**  
**FIRST SET OF INTERROGATORIES**

Pursuant to Rules 2.116 and 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer United Industries Corporation requests that Applicant Chemian Technology Limited answer the following Interrogatories, under oath and in writing, within thirty (30) days after service.

**DEFINITIONS**

A. "Opposer" or "UIC" shall mean United Industries Corporation, its affiliated corporations and entities, and its officers, directors, employees, agents, attorneys, subsidiaries, predecessors in interest and any other Person acting on its behalf or subject to its control.

B. "Applicant" or "Chemian Technology" shall mean Chemian Technology Limited, its affiliated corporations and entities, and its officers, directors, employees, agents, attorneys, subsidiaries, predecessors in interest and any other Person acting on its behalf or subject to its control.

C. "Applicant's Mark" shall mean the CITREPEL mark that is the subject of U.S. Patent and Trademark Office application Serial No. 85805232, for use in connection with "insect repellent preparations" in Class 5, and any other registered and unregistered trademarks consisting of or incorporating the designation CITREPEL for which Applicant may claim

ownership in the United States of America.

D. “Application” shall mean U.S. Trademark Application Serial No. 85805232.

E. “REPEL Mark” shall mean all registered and unregistered trademarks and service marks owned or used by UIC in the United States of America that consist of or incorporate the mark REPEL, either standing alone or in combination with other words and/or design elements, including but not limited to the mark described in Paragraph 2 of the Notice of Opposition.

F. “Board” shall mean the Trademark Trial and Appeal Board.

G. “Documents” is defined in the broadest sense permitted by the Federal Rules of Civil Procedure, including but not limited to, writings, drawings, graphs, charts, photographs, phone records, stored and retained electronic communications (including but not limited to electronic mail and instant messaging communications) and other data compilations from which information can be obtained and translated (if necessary) through detection devices into reasonably usable form, including but not limited to correspondence, memoranda (including internal memoranda), handwritten notes, rough drafts, business records, summaries, calendars, appointment books, expense vouchers, receipts, telephone records, message slips, logs, diaries, time sheets, time records, computer printouts, computer lists, computer diskettes and computer indices.

H. “Concerning” shall mean connected with, dealing with, in reference to, referring to, regarding, relating to, relative to, respecting, touching, touching on, discussing, or referencing.

I. “Communication” shall mean any statement, representation, or other transmission of information from one person to another and any questions posed by one person to another in or via any medium, including without limitation, by personal meeting, telephone,

letter, facsimile, or e-mail.

J. “Identify” with respect to a person shall mean to provide the following information to the extent known: the name, job title, current or last known home address and home telephone number, last known place of employment, and the address and telephone number of such place of employment.

K. “Identify” with respect to a business entity shall mean to provide the name of such business entity, its last known address and telephone number, the jurisdiction under whose laws it is organized and the jurisdiction in which it maintains its principal place of business.

L. “Identify” with respect to a document shall mean to provide, to the extent known, the following information: the title and date of the document, if any, its author, addressees and recipients, and a description of its contents.

M. “Person” shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

N. “Third Party” shall mean any Person other than Opposer or Applicant.

O. “Describe” shall mean to provide the Date and a full and complete narrative account of the information requested without omission of any information, whether or not deemed by Applicant to be admissible or inadmissible for purposes of this proceeding.

P. “Advertising” shall mean advertising, marketing, or promotion.

Q. “Price” shall mean the wholesale price, suggested retail price, and any other price category utilized by Applicant.

R. “Date” shall mean the exact day, month and year, if ascertainable, or, if not, the best available approximation (including relationship to other events).

S. The conjunctive form “and” and the disjunctive form “or” shall be mutually

interchangeable and shall not be construed to limit any Interrogatory.

T. The terms “any” and “all” shall be mutually interchangeable, and the use of words either in the singular or plural shall be mutually interchangeable, and the use of words either in the singular or plural in the following Interrogatories shall not be construed to limit any Interrogatory.

### **INSTRUCTIONS**

A. If Applicant refuses to answer any Interrogatory in whole or in part based on a claim that any privilege applies to the information sought, state the privilege and describe the factual basis for Applicant’s claim of privilege with such specificity as will permit the Board to determine the legal sufficiency of the claim of privilege.

B. Each paragraph and subparagraph and the definitions are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular Interrogatory or the subject matter of such Interrogatory.

C. If any of these Interrogatories cannot be answered in full, answer to the fullest extent possible, specifying the reason for Applicant’s inability to answer the remainder, and stating what information, knowledge or belief Applicant has concerning the unanswered portion.

D. These Interrogatories are continuing. Applicant is under a duty to supplement, correct or amend Applicant’s response to any of these Interrogatories if Applicant learns that any response that is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing.

E. Unless otherwise specified, the geographic area applicable to each of these Interrogatories is the United States of America.



## **INTERROGATORIES**

1. Identify each Person with knowledge of Applicant's conception, creation, selection, and adoption of Applicant's Mark.
2. Identify each Person with knowledge of Applicant's use or intended use of Applicant's Mark.
3. Describe with specificity the process by which Applicant selected Applicant's Mark.
4. Describe all steps taken by Applicant to determine whether Applicant's Mark infringed or infringes the rights of Opposer or any Third Party, including but not limited to any investigation or search that has been conducted.
5. Identify all alternative names and marks considered by Applicant for the goods for which Applicant ultimately chose to use Applicant's Mark, including but not limited to any names or marks consisting of or incorporating the term "REPEL" and/or any variant spelling of that term, whether standing alone or as part of compound words or designs.
6. Describe each good on which Applicant has used, is using, and intends to use Applicant's Mark, including but not limited to the Date(s) of first use in United States commerce for each good identified.
7. Identify each of the ingredients comprising the goods covered by Applicant's Mark.
8. Identify each Person responsible for or involved with the planned or actual Advertising of goods sold or to be sold under Applicant's Mark, including but not limited to the planned or actual Advertising of goods sold or to be sold under Applicant's Mark through online media, describing each such Person's specific responsibilities, including to the extent applicable, a description of the specific goods or geographic areas for which each such Person is responsible.

9. Identify (including, as appropriate, by title, and name of publication, website domain name, and type of media) each medium through which any goods have been Advertised, or are planned to be Advertised, under Applicant's Mark.

10. Identify each Person with whom Applicant has entered into an agreement, arrangement, franchise or partnership wherein Applicant has granted the Person the right or license to use all or part of Applicant's Mark.

11. State the Prices, or intended Prices, of each of the goods sold or to be sold by Applicant under Applicant's Mark.

12. Identify, by city, state or other geographical region, where Applicant and any Person acting on Applicant's behalf or at his direction has sold or offered to sell goods or services under Applicant's Mark and specify the Dates on which such sales or offers of sale have been or will be made.

13. Identify each instance of which Applicant has actual or hearsay knowledge, directly or indirectly, of any actual or purported instance of confusion or association of any type between Applicant and goods sold or to be sold under Applicant's Mark, and Opposer and goods sold under the REPEL Mark. For each such instance, identify any Person actually or purportedly confused, state the Date on which the instance occurred, and describe the nature of the confusion or association, the reason(s) given for the association or confusion, and the manner in which Applicant became aware of such confusion or association.

14. Identify each Communication between Applicant and any Third Party (including any customer or potential purchaser of Applicant's goods) concerning Applicant's Mark or goods sold or to be sold under Applicant's Mark in which any participant in the Communication mentioned Opposer or its goods, including the presence, absence, or possibility of any similarity, other issue, or any licensing or other relationship between Opposer and Applicant and the

parties' respective goods.

15. For each Communication identified in response to Interrogatory No. 14, identify the type of Communication, the names of the Persons who participated in the Communication, the Date on which the Communication occurred, and describe the substance of the Communication.

16. For each category of goods sold or to be sold under Applicant's Mark, identify and describe the channels of trade currently employed, employed in the past, and reasonably likely to be employed in the near future, in connection with such sales.

17. Describe the target or typical customers, including both initial purchasers and end consumers, of goods sold under Applicant's Mark.

18. Identify and describe the past and/or present relationship, if any, between Applicant and Citraco, Inc.

19. Identify and describe the past and/or present relationship, if any, between Applicant and Citrefine International Ltd.

20. Identify the Date(s) on which Applicant or any Person employed by or associated with Applicant first became aware of the REPEL Mark and the manner in which such awareness occurred.

21. Identify each Communication between Applicant and any Third Party concerning the subject matter of this proceeding, specifying for each such Communication the Person(s) involved, the Date of the Communication, and its substance.

22. If Applicant has not yet begun using Applicant's Mark in connection with sales of the goods identified in the Application, state each and every reason Applicant has not yet commenced use of Applicant's Mark in connection with those particular goods.

23. Identify each Person Applicant may call as an expert witness in this proceeding

and, with respect to each such expert, describe with particularity the subject matter about which the expert is expected to testify.

24. Identify all documents responsive to Opposer United Industries Corporation's First Request for Production of Documents that have either been destroyed or are no longer within Applicant's possession, custody, or control.

25. Identify each Person, other than counsel, who participated in any way in the preparation of responses to these Interrogatories.

This 1st day of December, 2015.



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*Attorneys for Opposer  
United Industries Corporation*

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CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **Opposer United Industries Corporation's First Set of Interrogatories** was served on Applicant's Attorney of Record on December 1, 2015 via first-class mail, with a courtesy copy by email, addressed to:

William Hare, Esq.  
McNeely, Hare and War LLP  
12 Roszel Road, Suite C104  
Princeton, NJ 08540-6234

*bill@miplaw.com*



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Sabina A. Vayner  
*Attorney for Opposer*

## **EXHIBIT B**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
	)	Opposition No. 91211208
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CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

**OPPOSER UNITED INDUSTRIES CORPORATION'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 2.116 and 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer United Industries Corporation requests that Applicant Chemian Technology Limited produce for inspection and copying, at the offices of Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street, Suite 2800, Atlanta, Georgia, 30309, or at a location to which the parties mutually agree, within thirty (30) days after service of these requests, the documents identified below.

**DEFINITIONS**

Opposer incorporates by reference, as if fully set forth here, the Definitions set forth in Opposer United Industries Corporation's First Set of Interrogatories, which are being served contemporaneously with these requests.

**INSTRUCTIONS**

A. Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the numbered categories in these Requests.

B. With respect to any document withheld from production upon a claim of privilege, state for each such document: (i) the type of document; (ii) the date of the document;

(iii) the name, address, and job title of the author of the document; (iv) the name, address, and job title of each recipient of the document; (v) a brief summary of the subject matter of the document; and (vi) the present whereabouts of the document and name, address, and title of the custodian thereof.

C. These Requests shall be deemed to be continuing. Applicant is under a duty to supplement, correct, or amend Applicant's responses to any of these Requests if Applicant learns that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing. If, after producing documents, Applicant becomes aware of additional documents responsive to these Requests, such documents shall be produced whether such documents were newly discovered, newly created, or otherwise.

D. Unless otherwise specified, the geographic area applicable to each of these Document Requests is the United States of America.

### **REQUESTS FOR PRODUCTION**

1. Documents concerning Applicant's conception, creation, selection, design, and decision to use or intent to use Applicant's Mark on the applied-for goods, including but not limited to trademark searches, investigations, market research or studies, focus groups, written reports, artwork, sketches, drafts, drawings, or images.

2. Documents concerning alternative names and marks considered by Applicant for the goods for which Applicant ultimately chose to use Applicant's Mark, including but not limited to any names or marks consisting of or incorporating the term "REPEL" and/or any variant spelling of that term, whether standing alone or as part of compound words or designs, including Communications, trademark searches, investigations, market research or studies,



written reports, artwork, sketches, drafts, drawings, or images.

3. Documents concerning the ingredients comprising the goods covered by Applicant's Mark.

4. Documents concerning the decision by Applicant to apply for a federal trademark registration of Applicant's Mark in connection with the proposed goods.

5. Documents concerning Applicant's attempt(s) to register Applicant's Mark with the U.S. Patent and Trademark Office, or with any state within the United States.

6. Documents concerning any modifications or variations or proposed modifications or variations to Applicant's Mark since Applicant's initial selection of Applicant's Mark.

7. Documents concerning any opinion that Applicant received regarding Applicant's right to adopt, use, or register Applicant's Mark.

8. Documents concerning Applicant's determination that it had or has the right to adopt, use, and/or register Applicant's Mark as a trademark.

9. Documents concerning each good on which Applicant considered using, has used, is using, or intends to use Applicant's Mark.

10. Documents evidencing Applicant's *bona fide* intention to use Applicant's Mark in commerce in connection with each and every good listed in the Application as of the filing date of the Application.

11. Documents concerning and sufficient to identify Applicant's planned or actual Advertising of Applicant's goods in connection with Applicant's Mark, including without limitation press releases, invitations, letterhead, envelopes, labels, stationery, and other office supplies, buildings, vehicles or other equipment, product packaging and bottles, catalogues, web pages, signs, brochures, print advertisements, radio and television advertisements, and any other

publicly distributed materials. (Please provide photographs of any responsive uses of Applicant's Mark on buildings, signage, or equipment.).

12. Documents concerning and sufficient to identify the stores, websites, distributors, or other channels of trade through which Applicant sells or intends to sell any goods under Applicant's Mark.

13. Documents concerning and sufficient to identify the typical or target customers, including both initial purchasers and end consumers, of goods sold or to be sold under Applicant's Mark.

14. Documents concerning and sufficient to identify the actual and planned annual dollar amount of expenditures on Advertising efforts or activities undertaken or planned to be undertaken by Applicant with respect to the goods sold or to be sold under Applicant's Mark.

15. Documents sufficient to identify the Prices, or intended Prices, of each of the goods sold or to be sold by Applicant under Applicant's Mark.

16. Documents, including financial projections or forecasts, concerning planned, budgeted, anticipated or actual revenue generated by, or planned, anticipated, or actual expenses associated with Applicant's goods sold or to be sold under Applicant's Mark (by month, if available, or by each separate period reflected in Applicant's records).

17. Documents sufficient to identify Applicant's total number of unit sales or estimated, planned, or budgeted sales of goods sold under Applicant's Mark (by month, if available, or by each separate period reflected in Applicant's records).

18. Documents concerning any actual or purported instances of confusion or association of any type between Applicant and goods sold under Applicant's Mark, and Opposer and goods sold under the REPEL Mark.

19. Documents concerning Applicant or Applicant's Mark in which any participant in the Communication mentioned Opposer or its goods, including the presence, absence, or possibility of any similarity, other issue, or any licensing or other relationship between Opposer and Applicant and the parties' respective goods.

20. Documents comprising or concerning any Communication between Applicant and any Third Party concerning the subject matter of this proceeding.

21. Representative samples of each item bearing, incorporating, or displaying Applicant's Mark, including without limitation each good sold or to be sold under Applicant's Mark, as well as the packaging for each such good.

22. Representative examples of each actual or proposed label, hangtag or package bearing Applicant's Mark that has been used or is intended to be used by Applicant.

23. Documents concerning Applicant's introduction or planned introduction of goods under Applicant's Mark to customers or potential customers.

24. Documents sufficient to identify the Date on which Applicant first used or intends to use Applicant's Mark in commerce in connection with each and every good listed in the Application.

25. Documents concerning the <www.chemian.co.uk> domain name and its associated website, including but not limited to webpage printouts, visitor traffic reports, and marketing and advertising referencing the <www.chemian.co.uk> domain name or website in connection with Applicant's Mark.

26. Documents sufficient to identify each webpage (including but not limited to each webpage modification and update) associated with the <www.chemian.co.uk> domain name that in any way incorporates or includes Applicant's Mark, from the date of registration of the

domain name to the present.

27. Documents concerning each website owned, used, and/or operated by Applicant, either currently or in the past, to distribute, sell, or Advertise goods bearing Applicant's Mark, including but not limited to webpage printouts and visitor traffic reports for each website.

28. Documents concerning Applicant's business plans in connection with Applicant's use or intention to use Applicant's Mark.

29. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning the goods sold or to be sold under Applicant's Mark.

30. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's customers or potential customers.

31. Documents concerning any research (including focus group studies, consumer surveys, test marketing, or other market evaluations) performed concerning Applicant's Mark, including without limitation any research to determine whether there exists a likelihood of confusion between Applicant's Mark and the REPEL Mark.

32. Documents concerning any applications filed by Applicant for regulatory approval of the goods sold or to be sold under Applicant's Mark, including but not limited to documents sufficient to identify the Date(s) on which any such applications were filed or were granted.

33. Documents concerning any filings made by Applicant with any government agency in connection with goods bearing Applicant's Mark.

34. Documents concerning any Communications between Applicant and Opposer

regarding Applicant's Mark or the REPEL Mark.

35. Documents concerning Opposer or the REPEL Mark.

36. Documents concerning Applicant's knowledge of Opposer's ownership and use of the REPEL Mark.

37. Documents comprising or concerning Communications between Applicant and Applicant's customers or the public, including promotions, complaints, inquiries, and correspondence, regarding any goods sold or to be sold under Applicant's Mark.

38. Documents concerning any actual or threatened litigation or administrative proceedings involving allegations of trademark infringement, unfair competition, or dilution to which Applicant is or was a party, including but not limited to any cease and desist letters or other correspondence and including any documents concerning any actual or threatened litigation or administrative proceeding other than this proceeding.

39. Documents concerning or generated by or from any Third Parties that Applicant has engaged to assist in the sale or Advertising of goods under Applicant's Mark, including without limitation public relations and advertising agencies, website developers, and printers.

40. Documents sufficient to identify any license agreement, assignment, or any other agreement concerning Applicant's Mark.

41. Documents concerning any meeting held by or on behalf of Applicant, at which any of Opposer's goods, the REPEL Mark, Applicant's Mark, or this proceeding was discussed, including but not limited to any minutes, summaries, correspondence, notes, and/or reports recording the events, decisions, and/or discussion made at any such meetings.

42. Documents concerning the past and/or present relationship, if any, between Applicant and Citracco, Inc.

43. Documents concerning the past and/or present relationship, if any, between Applicant and Citrefine International Ltd.

44. Documents concerning any expert witness who may testify on behalf of Applicant in this matter, whether or not such expert will actually testify in this matter.

45. Documents sufficient to identify any formal or informal plan, policy, or understanding of Applicant concerning document retention or destruction, including retention, destruction, or archiving of email correspondence.

46. All documents relied upon or referred to by Applicant in responding to Opposer United Industries Corporation's First Set of Interrogatories and in any supplementation or amendment thereof.

47. All documents relied upon, referred to, or identified by Applicant in preparing its Initial Disclosures in this proceeding and in any supplementation or amendment thereof.

This 1st day of December, 2015.



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William M. Bryner  
**Kilpatrick Townsend & Stockton LLP**  
1001 West Fourth Street  
Winston-Salem, NC 27101  
Telephone: (336) 607-7300  
bbryner@kilpatricktownsend.com

Sabina A. Vayner  
**Kilpatrick Townsend & Stockton LLP**  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309-4528  
Telephone: (404) 815-6500  
svayner@kilpatricktownsend.com

*Attorneys for Opposer  
United Industries Corporation*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

UNITED INDUSTRIES CORPORATION,	)	
	)	Opposition No. 91211208
Opposer,	)	
	)	TM: CITREPEL
v.	)	
	)	Serial No. 85805232
CHEMIAN TECHNOLOGY LIMITED,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing **Opposer United Industries Corporation's First Request for Production of Documents** was served on Applicant's Attorney of Record on December 1, 2015 via first-class mail, with a courtesy copy by email, addressed to:

William Hare, Esq.  
McNeely, Hare and War LLP  
12 Roszel Road, Suite C104  
Princeton, NJ 08540-6234

*bill@miplaw.com*



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Sabina A. Vayner  
*Attorney for Opposer*

## **EXHIBIT C**



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**From:** Bryner, Bill  
**Sent:** Thursday, January 07, 2016 2:47 PM  
**To:** William Hare  
**Cc:** Vayner, Sabina; materassi@miplaw.com; chris@miplaw.com  
**Subject:** RE: Discovery Requests in UIC v Chemian, CITREPEL

Bill:

I am presently listening-in on a conference call, and have another call at 4:00 p.m. I'll call you in between those or, barring that, perhaps we can speak at 4:30 p.m.

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400  
office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** William Hare [<mailto:bill@miplaw.com>]  
**Sent:** Thursday, January 07, 2016 2:35 PM  
**To:** Bryner, Bill  
**Cc:** Vayner, Sabina; materassi@miplaw.com; chris@miplaw.com; bill@miplaw.com  
**Subject:** RE: Discovery Requests in UIC v Chemian, CITREPEL

Bill,  
Do you have a couple minutes for a quick call.  
Thanks,  
Bill

**William D. Hare**



5335 Wisconsin Ave, NW | Suite 440 | Washington, DC 20015  
12 Roszel Road | Suite C104 | Princeton, NJ 08540  
Tel (202) 640-1801 | Fax (202) 478-1813 | [Email](#) | [Web](#) | [Directions](#)

---

**From:** Bryner, Bill [<mailto:BBRYNER@kilpatricktownsend.com>]  
**Sent:** Thursday, January 07, 2016 1:56 PM  
**To:** William Hare  
**Cc:** Vayner, Sabina; [materassi@miplaw.com](mailto:materassi@miplaw.com); [chris@miplaw.com](mailto:chris@miplaw.com)  
**Subject:** RE: Discovery Requests in UIC v Chemian, CITREPEL

Bill:

By our calculation, Chemian's responses to our written discovery requests were due to be served on or before January 5, 2016. To date we have not received any such responses. Were any served? Please advise.

Bill

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

## **EXHIBIT D**

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**From:** Bryner, Bill  
**Sent:** Thursday, January 07, 2016 3:21 PM  
**To:** William Hare  
**Cc:** materassi@miplaw.com; chris@miplaw.com; Vayner, Sabina  
**Subject:** United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill:

Further to the telephone conversation we just completed, I understood you to say that Chemian has, to date, served no responses to UIC's discovery requests that were served on December 1, 2015. The deadline to do so was January 5, 2016. We deem all objections to UIC's requests to have been waived as a result of Chemian's failure to respond timely. We intend to file a motion to compel responses with the TTAB and, to that end, request that you and I speak, by telephone, on Monday afternoon (January 11, 2016) to fulfill our meet-and-confer obligations in advance of our filing such a motion. Please let me know of your availability to do so.

Regards,  
Bill



**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400

office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656

[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

## **EXHIBIT E**

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**From:** Bryner, Bill  
**Sent:** Monday, January 11, 2016 5:10 PM  
**To:** William Hare  
**Cc:** materassi@miplaw.com; chris@miplaw.com; Vayner, Sabina  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill:

Further to our meet-and-confer telephone call this afternoon, we understand from you that no responses to our discovery requests are forthcoming from Chemian. As a result, we intend to file a motion to compel. If you learn of any additional material information from your client, please let us know promptly.

Bill

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400  
office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** Bryner, Bill  
**Sent:** Monday, January 11, 2016 2:53 PM  
**To:** 'William Hare'  
**Cc:** materassi@miplaw.com; chris@miplaw.com; Vayner, Sabina  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

That works. Thanks.

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400  
office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** William Hare [<mailto:bill@miplaw.com>]  
**Sent:** Monday, January 11, 2016 2:48 PM  
**To:** Bryner, Bill  
**Cc:** [materassi@miplaw.com](mailto:materassi@miplaw.com); [chris@miplaw.com](mailto:chris@miplaw.com); Vayner, Sabina; [bill@miplaw.com](mailto:bill@miplaw.com)  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill,  
5 PM is fine for me. I will wait for you call if that is ok.  
Thanks,  
Bill

**William D. Hare**



5335 Wisconsin Ave, NW | Suite 440 | Washington, DC 20015

**From:** Bryner, Bill [<mailto:BBRYNER@kilpatricktownsend.com>]  
**Sent:** Monday, January 11, 2016 2:08 PM  
**To:** William Hare  
**Cc:** [materassi@miplaw.com](mailto:materassi@miplaw.com); [chris@miplaw.com](mailto:chris@miplaw.com); Vayner, Sabina  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill:

Sure. Actually, 5:00 p.m. would be ideal for me. Is that all right for you?

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400  
office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** William Hare [<mailto:bill@miplaw.com>]  
**Sent:** Monday, January 11, 2016 2:06 PM  
**To:** Bryner, Bill  
**Cc:** [materassi@miplaw.com](mailto:materassi@miplaw.com); [chris@miplaw.com](mailto:chris@miplaw.com); Vayner, Sabina; [bill@miplaw.com](mailto:bill@miplaw.com)  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Hello Bill,  
I have time today but can we wait till after about 3:30 or so? FYI, I have not heard back from my client yet on this.  
Thanks,  
Bill

**William D. Hare**



5335 Wisconsin Ave, NW | Suite 440 | Washington, DC 20015  
12 Roszel Road | Suite C104 | Princeton, NJ 08540  
Tel (202) 640-1801 | Fax (202) 478-1813 | [Email](#) | [Web](#) | [Directions](#)

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**From:** Bryner, Bill [<mailto:BBRYNER@kilpatricktownsend.com>]  
**Sent:** Monday, January 11, 2016 2:01 PM  
**To:** William Hare  
**Cc:** [materassi@miplaw.com](mailto:materassi@miplaw.com); [chris@miplaw.com](mailto:chris@miplaw.com); Vayner, Sabina  
**Subject:** RE: United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill:

Following up on this. Do you have time to speak this afternoon about the below? I am out of town tomorrow and Wednesday, but could speak on Thursday or Friday if today is problematic for you.

Bill

**Bill Bryner**

**Kilpatrick Townsend & Stockton LLP**

1001 West Fourth Street | Winston-Salem, NC 27101-2400  
office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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**From:** Bryner, Bill  
**Sent:** Thursday, January 07, 2016 3:21 PM  
**To:** 'William Hare'  
**Cc:** 'materassi@miplaw.com'; 'chris@miplaw.com'; Vayner, Sabina  
**Subject:** United Industries v. Chemian (CITREPEL Opposition): Discovery Deficiencies and Meet-and-Confer Request

Bill:

Further to the telephone conversation we just completed, I understood you to say that Chemian has, to date, served no responses to UIC's discovery requests that were served on December 1, 2015. The deadline to do so was January 5, 2016. We deem all objections to UIC's requests to have been waived as a result of Chemian's failure to respond timely. We intend to file a motion to compel responses with the TTAB and, to that end, request that you and I speak, by telephone, on Monday afternoon (January 11, 2016) to fulfill our meet-and-confer obligations in advance of our filing such a motion. Please let me know of your availability to do so.

Regards,  
Bill



**Bill Bryner**  
**Kilpatrick Townsend & Stockton LLP**  
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office 336 607 7482 | cell 336 918 0447 | fax 336 734 2656  
[bbryner@kilpatricktownsend.com](mailto:bbryner@kilpatricktownsend.com) | [My Profile](#) | [vCard](#)

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